repeatedly, that when a will was written on the first and third pages of a sheet and signed on the second it was good. *In re Coombs*, L. R. 1 P. & D. 302; *In re Stoaks*, 23 W. R. 62. The result of the English cases seems eminently satisfactory, but it is conceived that it is not necessary to adopt their expedient of extra legislation in order to reach it. For why is it not a fair and sensible construction of such statutes as those in question to hold that "end" means what in fact the testator made the end? It certainly is in point of time the end, even though it be on the second page. Further, since it clearly expresses his completion of the instrument as well as though placed at the physical end, the evils which the statutes aimed to prevent are avoided. *Tonnele* v. *Hall*, 4 N. Y. 140. A more serious effect of the strict view has been said to be the failure of incorporation by reference of those clauses which might come after the signature or of documents attached to the will. That certainly is an objection, as there is enough value in the doctrine of incorporation to retain it. On the whole, therefore, it seems that one might well regard a statute requiring a testator's signature at the end of a will to mean that it shall be the end in point of time.

TESTIMONY ON A FORMER TRIAL BY A WITNESS SINCE DECEASED. — The law as to the admissibility on a subsequent trial of the testimony of witnesses deceased since the former trial, like many other topics of the law of evidence, is in a far from satisfactory condition. The rule is generally stated that for the testimony to be admissible the cause of action must be the same, and, if not between the same parties, they must at least be privy in law, in blood, or in estate to those of the former trial. Professor Wigmore, possibly with the intention of placing the rule on some rational basis, in his edition of Greenleaf on Evidence, § 163 a, states that, as regards the parties to the suit, "all that is essential is that the present opponent should have had a fair opportunity for cross-examination." On this passage the plaintiff in a recent case largely relied. *Metropolitan Railway Co.* v. *Gumby*, New York Law Journal, Feb. 6, 1900. In an action by a parent for the loss of a child's services through an injury to the child by the defendant's alleged negligence, the court permitted to be read the testimony of a deceased witness of the accident in a previous action brought by the infant's guardian *ad litem* against the defendant for the same injury. On a writ of error, the court held that, there being no privity between the plaintiffs in the two actions, the evidence was wrongly admitted.

While it is evident there is no underlying principle on which this limitation requiring privity between the parties offering the evidence in the two cases may be supported, no fault can be found with the decision, as it is probably as well for the courts to adhere closely to precedent in decisions on the law of evidence. The established rule requiring privity between the parties, for this evidence to be admissible, is apparently based on the same misconception as the doctrine that the admissions of a grantor are evidence against his grantee; namely, that the rule that the grantee's substantial rights may be cut down by the acts of the grantor before conveyance has some application to the evidence admissible in a suit to which the grantee is a party. Undoubtedly one should only get the interest his grantor had to give, but it is an altogether different matter to allow the acts of the grantor to affect in this way the evidence admis-

sible in a suit by the grantee. *Paige* v. *Cagwin*, 7 Hill, 361. The argument of the court in *Morgan* v. *Nicholl*, L. R. 2 C. P. 117, that for the evidence to be admissible against one it must be admissible against both, would seem without foundation. Of course the plaintiff here could justly object to its admission, because he had no opportunity to cross-examine the witness, but why should the defendant object who had? The cases of *res judicata* and estoppel, which are often cited as indicating the proper rule for this subject, rest on an entirely different principle.

There has, indeed, in some jurisdictions, been a slight deviation from the general rule in criminal causes. In a civil trial for an assault, the evidence of a deceased witness given in a criminal trial for the same assault has been admitted. *Kreuger* v. *Sylvester*, 100 Ia. 647. And *dicta* are occasionally found that if the opposite party had the right of cross-examination it is sufficient. Undoubtedly this desirable result will eventually be reached.

RECENT CASES.

AGENCY — UNLAWFUL ACTS — LIABILITY OF CORPORATION. — The plaintiff left defendants' train before reaching the station for which he had bought a ticket. The station master, by locking the only door of the station, detained him to compel a surrender of this ticket. *Held*, that the defendants are liable for the false imprisonment. *Farry* v. *Great Northern Ry. Co.*, [1898] 2 Ir. 352.

The court recognizes the English doctrine that a corporation cannot be held to incidentally authorize the commission of unlawful acts by its agents, since the corporation has no authority to commit such acts itself. *Poulton* v. *London, etc. Ry. Co.*, L. R. 2 Q. B. 534; *Barry* v. *Dublin, etc. Co.*, L. R. 26 Ir. 150, but holds that in this case, although the detention was unlawful, yet locking the door was lawful and within the scope of the agent's authority. This reasoning seems artificial, for locking the door was the very act which caused the detention, and must have been equally unlawful. Moreover, the English doctrine itself can hardly be regarded as sound, inasmuch as corporations clearly have the physical power, without legislative authority, to commit unlawful acts, and the logical result of the argument is to exempt all principals from liability for their agents' torts which are not expressly authorized. A better view is that unlawful as well as lawful acts may be within the incidental powers of the agents of a corporation. *Howe* v. *Newmarch*, 94 Mass. 49; *Johnston* v. *South Western R. R. Bank*, 3 Strob. Eq. 263. The above decision reaches an undoubtedly correct result, and shows a desire of the court to limit the application of the English doctrine where possible.

BANKRUPTCY — RIGHTS OF TRUSTEE IN PREMISES LEASED TO BANKRUPT. — The premises were leased to the bankrupt upon an unexpired lease. The landlord brought ejectment against the trustee, who had continued the possession. Upon the petition of the trustee for an injunction, *held*, that the court will allow the trustee, without affirming the lease, to continue the possession for such time as may be reasonably necessary for the execution of his trust, upon the payment to the landlord of compensation. *Re Chambers, Calder & Co.*, 98 Fed. Rep. 865 (Dist. Ct., R. I.).

It is a general principle that all property of the bankrupt passes to the trustee, except that he may reject unprofitable property. See *American File Co.* v. *Garrett*, 110 U. S. 295. Accordingly, as regards a lease, the trustee, unless restrained by the terms of the lease, may adopt it or reject it, as he judges for the best interests of the estate. *Re Breck*, 8 Ben. 93; *Commonwealth* v. *Franklin*, 115 Mass. 278. It has been tacitly assumed that the trustee must either affirm or disaffirm, and is only entitled to the protection of equity for a reasonable time in which to come to a decision and upon payment of compensation to the landlord. *Re Laurie*, 4 Nat. Bank. Reg. 7; *Re Washburn*, Fed. Cas. No. 17211; *Re Metz*, 6 Ben. 571. The proposition of the principal case, however, is very different; that the trustee without affirming the lease may hold possession for such time as is reasonable for the execution of his trust upon payment of compensation for the occupation. This view is without authority, but it commends itself as just; for otherwise the coercion of the situation might force the trustee to incur great loss.